

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ANTHONY HARTLEY,

Petitioner,

v.

Case No.: 2:16-cv-373-FtM-38MRM

FLORIDA ATTORNEY GENERAL
and SECRETARY, DOC,

Respondents.

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OPINION AND ORDER¹

This matter comes before the Court on a limited remand from the Eleventh Circuit Court of Appeals to determine if Petitioner is entitled to an extension of the appeal period under [Fed. R. App. P. 4\(a\)\(6\)](#) ([Doc. 17](#)) filed on December 6, 2019.

Pursuant to [Fed. R. Civ. P. 77\(d\)](#):

Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in Rule 5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in Rule 5(b).

According to the Court's docket sheet, the Court's Opinion and Order denying the Petition and the subsequent Judgment were entered on August 28, 2019. The Opinion and Order and Judgment were mailed to the Petitioner on August 28, 2019, and the mailing was recorded on the Court's docket. Thus, the clerk complied with the provisions of Rule 77(d).

¹ Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

Petitioner's Notice of Appeal ([Doc. 15](#)) was filed with the District Court on October 2, 2019. The envelope in which the Notice of Appeal arrived bears a date stamp by the Desoto County Correctional Institution indicating that the enclosed document was received by the Desoto County Correctional Institution's mailroom on September 29, 2019. Additionally, the envelope was processed through the U.S. Mail in Tampa, Florida, on September 30, 2019, before arriving in Fort Myers, Florida. Therefore, the Court finds that the Notice of Appeal was delivered to Desoto County Correctional Institution officials by Petitioner on September 29, 2019.

Under [Fed. R. App. P. 4\(a\)\(6\)](#), Plaintiff's Notice of Appeal was due on or before September 28, 2019. After a review of the record, Petitioner received notice of the denial of his Petition in compliance with [Fed. R. Civ. P. 77\(d\)](#) and he Failed to file his Notice of Appeal within the thirty (30) day time limit as designated by [Fed. R. App. P. 4\(a\)](#). Consequently, Petitioner does not merit an extension of time of the appeal period.

Accordingly, it is now

ORDERED:

The Clerk of Court shall return the record as supplemented with a copy of this Order to the Eleventh Circuit Court of Appeals for further proceedings.

DONE and **ORDERED** in Fort Myers, Florida this 9th day of December 2019.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-2

Copies: All Parties of Record